

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Tehama)

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER ALLEN RAMOS,

Defendant and Appellant.

C074241

(Super. Ct. No. NCR83489)

This case comes to us pursuant to *People v. Wende* (1979) 25 Cal.3d 436. Defendant Christopher Allen Ramos filed a supplemental brief contending the trial court erred by failing to reinstate him on drug diversion probation. We address this issue, in addition to undertaking a review of the record as required by *Wende*, and affirm the judgment.

BACKGROUND

On February 14, 2012, a drug enforcement officer saw defendant riding his bicycle and stopped him because the officer knew he was a parolee at large. Defendant had .2 gram of methamphetamine and seven syringes in his possession.

Defendant pleaded guilty to transportation of methamphetamine (Health & Saf. Code, § 11379, subd. (a)) and, on March 19, 2012, was placed on drug diversion probation. As conditions of probation, defendant was ordered to participate in and complete an alcohol, drug, and psychological or psychiatric counseling/treatment program, including a residential treatment program, and keep his probation officer informed at all times of his correct residence address and obtain permission from his probation officer before changing residence.

Defendant entered a residential treatment facility but was discharged on November 7, 2012, after voluntarily leaving the program after 71 days. He entered another treatment program on January 29, 2013, but walked out of that program after one week. A petition for violation of probation was filed on February 15, 2013. Defendant, however, remained at large, his whereabouts unknown, until he was arrested on May 7, 2013.

On May 13, 2013, defendant admitted violating his probation by being unsatisfactorily discharged from the two treatment programs and by absconding from the second treatment facility and failing to inform the probation officer of his new address. Defendant requested referral to drug court.

On June 17, 2013, the trial court denied defendant's request for reinstatement on drug diversion probation and sentenced him to four years in jail. The trial court imposed various fines and fees, including a \$400 restitution fine, and awarded defendant 84 days of presentence custody credit.

Defendant appeals.

DISCUSSION

Defendant argues that the trial court abused its discretion by revoking his drug diversion probation because there was insufficient evidence that he was ineligible for drug treatment. We disagree.

On November 7, 2000, California voters passed the Substance Abuse and Crime Prevention Act of 2000 (Proposition 36), now codified as Penal Code section 1210.1 et seq.¹ (*People v. Floyd* (2003) 31 Cal.4th 179, 183.) Proposition 36 amended state law to require that “any person convicted of a nonviolent drug possession offense shall receive probation” (§ 1210.1, subd. (a)), conditioned on participation in and completion of an appropriate drug treatment program, instead of receiving a prison term or probation without drug treatment (*Floyd*, at p. 183).

“Anticipating that drug abusers often initially falter in their recovery, Proposition 36 gives offenders several chances at probation before permitting a court to impose jail time. The first time an offender violates a *drug-related* condition of probation, he is entitled to be returned to probation unless he poses a danger to others. [Citation.] The second time he violates a drug-related condition of probation, he is entitled to be returned to probation unless he poses a danger to others or is unamenable to treatment. [Citation.] Only upon a third violation of a drug-related condition of probation does an offender lose the benefit of Proposition 36’s directive for treatment instead of incarceration. [Citation.] Upon such a violation, the court regains its discretion to impose jail or prison time.” (*In re Taylor* (2003) 105 Cal.App.4th 1394, 1397-1398, fns. omitted.)

However, section 1210.1, subdivision (f)(2) provides: “If a defendant receives probation under subdivision (a), and violates that probation either by committing an offense that is not a nonviolent drug possession offense, *or by violating a non-drug-*

¹ Undesignated statutory references are to the Penal Code.

related condition of probation, and the state moves to revoke probation, the court may remand the defendant for a period not exceeding 30 days during which time the court may receive input from treatment, probation, the state, and the defendant, and the court may conduct further hearings as it deems appropriate to determine whether or not probation should be reinstated under this section. . . .” (Italics added.) “The term ‘drug-related condition of probation’ shall include a probationer’s specific drug treatment regimen, employment, vocational training, educational programs, psychological counseling, and family counseling.” (§ 1210.1, subd. (g).)

Defendant’s failure to keep his probation officer informed of his correct residence address and failure to obtain permission from his probation officer prior to changing his residence are not violations of a “drug-related condition of probation” as that phrase is expressly defined in section 1210.1, subdivision (g), that is, “a probationer’s specific drug treatment regimen, employment, vocational training, educational programs, psychological counseling, and family counseling.” Rather, both of these probation conditions are standard terms and conditions of probation applicable to most, if not all, probationers and are generally required in order for the probation department to perform its job—to care for and supervise the probationer. (§§ 1203, 1215.)

Prior to denying defendant reinstatement on probation, the trial court obtained and reviewed a current probation report. The report disclosed that defendant had failed to complete two drug treatment programs and that an adult felon drug court team assessment had been performed. The team reviewed defendant’s criminal record, including his past history of violence, gang issues, and a sex offense charge, and concluded that he was ineligible for the drug court program. The probation officer reported that defendant did not take his rehabilitation, or the conditions of probation, seriously and that defendant was a danger to the community.

Under these circumstances, the trial court did not err in denying defendant reinstatement on drug diversion probation.

Having also undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

RAYE, P. J.

We concur:

MURRAY, J.

DUARTE, J.